

**This Opinion is Not a  
Precedent of the TTAB**

Mailed: September 15, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Fowles Wine Pty Ltd.*  
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Serial No. 79157017  
—————

J. Scott Gerien of Dickenson Peatman & Fogarty,  
for Fowles Wine Pty Ltd.

Yatsye I. Lee, Trademark Examining Attorney, Law Office 107,  
J. Leslie Bishop, Managing Attorney.<sup>1</sup>

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Before Cataldo, Wellington and Lynch,  
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Fowles Wine Pty Ltd. (“Applicant”) seeks registration on the Principal Register of FARM TO TABLE (in standard characters) as a mark for “wines” in International Class 33.<sup>2</sup>

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<sup>1</sup> The involved application originally was examined by a different Examining Attorney.

<sup>2</sup> Application Serial No. 79157017, with an effective filing date of September 26, 2014, seeks an extension of protection under Section 66(a) of the Trademark Act of International Registration No. 1227808, issued on September 26, 2014.

The Trademark Examining Attorney has refused registration of Applicant's proposed mark under Section 2(e)(1), 15 U.S.C. § 1052(e)(1) because FARM TO TABLE is merely descriptive of a feature or characteristic of the identified goods, and Sections 1, 2, and 45 of the Trademark Act, 15 U.S.C. §§ 1051-1052, 1127, on the ground that FARM TO TABLE does not function as a trademark to indicate the source of Applicant's goods.<sup>3</sup>

When the refusals were made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusals to register.

***I. Examining Attorney's Evidence and Applicant's Evidence.***

In maintaining the refusals to register, the Examining Attorney submitted, *inter alia*, printouts from commercial internet web pages discussing the term "farm to table" in connection with wines, wine pairing, and wine and food events. The following examples are illustrative (emphasis added by the Examining Attorney):

Chaminade: "*Farm to Table Wine Dinners... Local Wine and the Finest Food Local Growers Have to Offer... Each meal consists of a set menu of five courses, with ingredients from local farms and paired with local wines...*" January 20, 2015 Office Action, TSDR pp. 5-6;

Experience Finger Lakes: "*Farm-to-Table Wine and Cooking Adventure... Chef Samantha will prepare and demonstrate the creation of a three-course lunch*

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<sup>3</sup> In her brief, the Examining Attorney indicated that she "is withdrawing the alternative argument that the mark is deceptively misdescriptive of the identified goods." 6 TTABVUE 4. Accordingly, those arguments will be given no consideration except to the extent that they are relevant to the remaining refusals of registration.

Page references herein to the application record refer to the .pdf version of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs refer to the Board's TTABVUE docket system.

featuring the farm's ingredients and *wines made at local Silver Thread Vineyards.*" February 20, 2015 Office Action, TSDR pp. 16-17;

Northern Vineyards Winery: "Wine Making Process...The wine making process begins in late August or early September at our winery. The grapes are harvested and transported to the winery...The complete *process from farm to table* is accomplished in our *local area*. The *wine making process is done on location* at Northern Vineyards Winery." June 24, 2015 Office Action, TSDR p. 5;

Thirst Wine Merchants Fort Greene: "*Farm-to-Table Wines...Most of the wines we sell are made by farmer-winemakers, by people who both tend their vines and make their wines.*" *Id.* at 12;

Liquid Assets: "Absolutely, the tendency to move in the direction of *farm-to-table* applies really well when it comes to *wine sourcing.*" *Id.* at 15;

Details: Willamette Valley, Ore. "Refined *farm-to-table* cuisine featuring local meats and produce – and, of course, *local wines...*" *Id.* at 24;

A quick rundown of what's happening at New Jersey restaurants: "...Genesis Farm will host a *farm-to table* dinner on Sept. 29, featuring eight locavore chefs...plus *local organic wine.*" *Id.* at 26;

Bainbridge Vineyards: "EDUCULTURE *FARM TO TABLE* DINNER...This weekend at Bainbridge Vineyards, we invite you to join local non-profit EduCulture for an authentic farm to table experience in the *fields where your food and wine is grown*"..."Each course will be paired with *slow wine, locally grown and produced by Bainbridge Vineyards.*" March 1, 2016 Office Action, TSDR pp. 2-3;

The Chamber – The Columbia Montour Chamber of Commerce: "Freas Farm offers PA preferred *farm to table wines* and Port. They use Minnesota hybrid *grapes grown in Sullivan County...*" *Id.* at 8;

Freas Farm Winery: "Freas Farm Winery is focused on serving high quality *farm to table wines.*" August 19, 2016 Office Action, TSDR p. 39;

FEAST: "Stone Hill to Host Its First *Farm-to-Table* Dinner August 14...In the winemaking process we're *using our grapes from our vineyards* in the Herman area." March 1, 2016 Office Action, TSDR pp. 9-10;

Genovese Italian Restaurant: "*Farm to Table Wine* Tasting featuring *local farmers & organic wines from Bonterra Vineyards...*" *Id.* at 12;

Napa Valley Vintners: “Leading the Culinary Team – Between the dinner parties and the Friday Barrel Auction & Marketplace, scores of the region’s chefs will be at the table for attendees, celebrating the *farm-to-table wines of Napa Valley*.” *Id.* at 21;

Springbank Farm: “This balanced, not too sweet, *farm-to-table wine* is made with 1 ½ pounds per bottle of *SpringBank Farm’s transitional blueberries grown locally* along the South Santiam River.” *Id.* at 26;

Pippin Hill Farm: *FARM-TO-TABLE WINE & FOOD...* “We welcome guests to enjoy our estate wines while savoring Virginia’s most exciting cuisine...Chef Scatena highlights the freshest ingredients from local farms, including our own Kitchen Garden, with seasonal menus that *showcase our wines*.” *Id.* at 38;

Bay Ridge Wine & Spirits: “W.O.M. Family-Owned, *Farm-to-Table California Zinfandel*. “*Family owned, hand harvested, native yeast* fermentation. They are a brilliant example of *farm to table wines* in affordable price points.” *Id.* at 47;

Missouri Wines: 3rd Annual Fall *Farm-to-Table Wine* Dinner. “Celebrate the harvest with a delicious gourmet meal in our newly-expanded barrel room paired with *our own Jowler Creek wines...*” August 19, 2016 Office Action, TSDR p. 25;

Quivira Vineyards: “Quivira Vineyards’ 2016 *Farm-to-Table* Dinner Series...Imagine a meal where the *entire menu, including the wine, has been grown mere feet from where you will be dining...*our partnering restaurants will be preparing distinct menus featuring produce and wines where *everything has been grown and nurtured on our estate...*” *Id.* at 32;

Five Points Berries Winery: “Exquisite *Farm-to-Table Wines*. Get a refreshing taste of *local wines from Five Points Berries*, a small *family orchard and winery* in Mauk, GA that has been producing a variety of rich-tasting blueberry wines since 2007.” *Id.* at 42;

Tom Gore Wines – Farm to Table in Hyannis. “A family farmer who supplied big wineries, saves *his best grapes for his own! Farm to Table wines*, good enough to put his own name on them!” *Id.* at 46;

WYOMING FIRST: Table Mountain Vineyards: ...“All the wines are ‘*Farm to Table Wines*’ meaning the fruit is sourced from local vineyards and fruit growers in Wyoming.” *Id.* at 47;

## Farm Dinners

Have you been wondering what all of the fuss is about Farm-to-Table style dinners? It seems that people everywhere are reading about, talking about, and going to Farm Dinners. At Farm to Table Catering, we think you should, too!

### What is a Farm-to-Table Dinner?

Farm Dinners are when a chef works with local farmers, ranchers, and/or wineries to produce fantastic meals, held in local vineyards & farms, that showcase the very best ingredients that are in season and available straight from the farm at the time of the dinner.

January 20, 2015 Office Action, TSDR 8;

## Wine Making Process

The wine making process begins in late August or early September at our winery. The grapes are harvested and transported to the winery. Depending on the growing season and grape variety, the crush can sometimes last through late October. The complete process from farm to table is accomplished in our local area. The wine making process is done on location at Northern Vineyards Winery.

We produce approximately 30 different wine varieties annually. The wines we produce may vary year to year depending on our growing season. Although a wine may not have the same grapes each year, it does maintain similar characteristics.

We offer personalized labels on some of our wines for weddings, birthdays and other special occasions. If you are interested please contact us.

Our wines are available for purchase at the Northern Vineyards Winery, at local retailers and online.



June 24, 2015 Office Action, TSDR 8;

## Farm-to-Table Wines

PRODUCT NEWS

Most of the wines we sell are made by farmer-winemakers, by people who both tend their vines and make their wines. We have a soft spot for wines that are made by vignerons who dry-farm their small parcels of land organically and/or biodynamically, hand-harvest their grapes, and ferment naturally with the ambient yeasts that occur on the skins of healthy grapes.

We love wines that are full of character and place, and distinctly expressive of the personality of the winemaker who made them. What's amazing is that most of these wines aren't that expensive and yet they're so refreshing, digestive, interesting, fun, versatile, and dynamic. And they can usually be enjoyed with or without food.

*Id.* at 15.

In addition, the Examining Attorney introduced into the record copies of articles from major newspapers discussing the term “farm to table” in connection with wines.<sup>4</sup>

The following examples are illustrative:

Copyright 2015 Star Tribune  
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Star Tribune (Minneapolis, MN)

January 8, 2015 Thursday  
METRO EDITION

**SECTION:** TASTE; Pg. 5T

**LENGTH:** 669 words

**HEADLINE:** LIQUID ASSETS

**BYLINE:** BILL WARD, STAR TRIBUNE (Mpls.-St. Paul)

**BODY:**

"Absolutely, the tendency to move in the direction of **farm-to-table** applies really well when it comes to **wine** sourcing," said Dana Bonelli, general sales manager at local distributor World Class **Wines**. "The agricultural standard of the producer is definitely being measured by the restaurateur."

The timing also coincides with the increasingly sophisticated and intrepid nature of local diners, especially younger ones.

"Millennials are far more sophisticated wine drinkers than any generation that has preceded them," Bonelli said. "There is really no fear about wine. A lot has to do with the fact that there is so much information that the mystery [of wine] has been removed."

The local selection "has gotten radically better than three or four ...

...people are buying more risks," said Mott, who has joined with GYST co-owners Mel and Ky Guse to bring their own twist to this movement: The restaurant carries several exclusive wines from vintners the partners had met in their travels.

"We asked importers and distributors if they could bring in wines from these amazing small producers that are doing things that are really authentic," Mott said, "because both the grower wants to do it and we want to do it."

Now that's the kind of **farm-to-table**, or perhaps vineyard-to-table, movement that any **wine** lover can get behind.

Follow Bill Ward on Twitter: @billward4.

*Id.* at 18;

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<sup>4</sup> June 24, 2015 Office Action, TSDR p. 18-30. The newspapers include the Star Tribune (Minneapolis, MN), Washington Post, San Francisco Chronicle, Star-Ledger (Newark, NJ), Boston Globe, Chicago Sun-Times, Hartford Courant (CN); Atlanta Journal-Constitution, The Oregonian (Portland, OR),

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The Boston Globe

September 7, 2014 Sunday

**SECTION:** SUNDAY; Travel; Pg. M,7,11

**LENGTH:** 1071 words

**HEADLINE:** Westport, a gem combining farmland with the seashore

**BYLINE:** By Cynthia Needham, Globe Staff

**BODY:**

...Wildlife Sanctuary on an early fall day, or at a wooden booth inside the whitewashed shingled restaurant. Well-dressed summer types mingle with just-off-the beach families in swimsuits. Lobster rolls weren't the only thing they were doing before it was hip. The Bayside's family owners have long been committed to sustainability and worked to make it the first certified green restaurant in Massachusetts. **Farm-to-table** vegetables, fish, and even the beer and **wine** are nearly all locally sourced. And then there's the pie. Oh, the pie! Not fancy stuff, but simple homemade confections with sweet berries, tart rhubarb, and buttery crust. Worth a few more calories before the drive home. (1253 Horseneck Road, Westport, 508-636-5882, www.thebaysiderestaurant.com, Fall Hours: Tuesday to Friday, 11 a.m. to 8 p.m., Saturday and Sunday, 8 a.m. to ...

*Id.* at 22;

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Chicago Sun-Times

July 26, 2014 Saturday

**SECTION:** LOCAL; Pg. 9

**LENGTH:** 393 words

**HEADLINE:** Kathy Hart takes her act to Highwood's restaurant scene

**BYLINE:** Karen Berkowitz. kberkowitz@pioneerlocal.com | @KarenABerkowitz

**BODY:**

...entertainment, in a comfortable and relaxing way along with emotionally-connecting hospitality," according to a written description of the couple's plans.

The outline, which was provided to Highwood officials, said dishes will be prepared with farm-to-table ingredients from local sources who share the couple's passion for planet-friendly practices. "Our meats will be hormone and antibiotic free, our seafood sustainable and our produce organic whenever possible," the description said.

The **farm-to table** theme will carry over to the cocktails, **wine** list and craft beers.

"Locally purchased fresh herbs, fruits and vegetables will be used in our cocktails whenever possible," Hart and Baruth wrote in the statement. "The wine list and craft beer selections will be far from typical, focusing on renewably resourced wineries and breweries, both local and nationwide, who use grapes, hops and barleys harvested from sustainable vineyards and farms."

*Id.* at 23.

In support of its arguments in favor of registration, Applicant submitted, *inter alia*, the following screenshot from its internet web page:

Applicant's November 5, 2015 Response to Office Action, TSDR p. 15.

Food Wines - Farm to Table | Fowles Wine 11/5/15, 6:57 PM

**fowles wine**  
STRATHBOGIE RANGES

EMPTY  5,289 LOG IN

WINE CLUB WHOLESALE INTERNATIONAL DISTRIBUTION CONTACT

Trade Resources Buy Wine Cellar Door Café News & Events About

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**WINES**

- The Exceptions
  - The Exception
- Food Wines
  - Are you game?
  - Farm to Table
  - Ladies who Shoot their Lunch
- Regional Wines
  - The Rule
  - 490metres
  - Stone Dwellers
- Events/Merchandise

**TYPE**

- Sparkling
- Whites
- Reds
- Fortified & Sweet

*become a friend.*

 **fowles wine** WINE CLUB



## Food Wines - Farm to Table

Farm to Table wines are bright, delicious and made to match with fresh farm produce shared among good friends.

 <p>2014 Sauvignon Blanc BOTTLE \$ 14.95 / MEMBER PRICE \$ 13.46 <a href="#">INFORMATION</a></p>	 <p>2013 Chardonnay BOTTLE \$ 14.95 / MEMBER PRICE \$ 13.46 <a href="#">INFORMATION</a></p>
 <p>2013 Shiraz BOTTLE \$ 14.95 / MEMBER PRICE \$ 13.46 <a href="#">INFORMATION</a></p>	 <p>2012 Cabernet Merlot BOTTLE \$ 14.95 / MEMBER PRICE \$ 13.46 <a href="#">INFORMATION</a></p>
 <p>2014 Pinot Noir BOTTLE \$ 14.95 / MEMBER PRICE \$ 13.46 <a href="#">INFORMATION</a></p>	<p>Sort by</p>

In addition, Applicant made of record during prosecution copies of third-party registrations for “FARM TO TABLE” formative marks for a variety of food products and related services, not including wine, and a table listing the registrations, the marks, and the identified goods and services:

<b>REGISTRATION NUMBER</b>	<b>TRADEMARK</b>	<b>GOODS/SERVICES</b>
3843015	FARMTOTABLE and Design	IC 030. US 046. G & S: Oatmeal
4370788	FARM TO TABLE FOODS	IC 030. US 046. G & S: Oatmeal

4622743	FARM TO TABLE	IC 029. US 046. G & S: Garlic-based spreads; bruschetta toppings. IC 030. US 046. G & S: Dipping sauce, ready-made sauces, salsa
4714280	FARM TO TABLE	IC 029. US 046. G & S: prepared food kits composed of meat, poultry, and vegetables
4791410	FARM TO TABLE	IC 008. US 023 028 044. G & S: home canning products, namely, cherry pitters. IC 021. US 002 013 023 029 030 033 040 050. G & S: Home canning products, namely, glass jars, non-electric pressure canners, non-electric boiling water canners, and kitchen utensils in the nature of jar lifters, funnels, bubble removers, headspace utensils used for creating space between item being canned and the can lid, and canning racks; and kitchen utensils, namely, non-electric food mills
4818271	FARM TO TABLE	IC 035. US 100 101 102. G & S: Retail store services featuring gifts

Applicant’s July 20, 2016 Response to Office Action, TSDR p. 10-15, 32-3;

<b>REGISTRATION NUMBER</b>	<b>TRADEMARK</b>	<b>GOODS/SERVICES</b>
2417658	WATT WATTPOULTRY.COM POULTRY USA POULTRY BUSINESS MANAGEMENT FARM TO TABLE and Design	IC 016. US 002 005 022 023 029 037 038 050. G & S: MAGAZINES DIRECTED TO THE POULTRY INDUSTRY
3721582	AUSTIN FARM TO TABLE	IC 041. US 100 101 107. G & S: On-line journals, namely, blogs featuring recipes, restaurant and product recommendations that highlight sustainable food in Central Texas
3849375	FRESH FROM CRYSTAL FARMS TO YOUR TABLE and Design	IC 029. US 046. G & S: Cheese; Processed eggs; Processed potatoes
3849377	FRESH FROM CRYSTAL FARMS TO YOUR TABLE	IC 029. US 046. G & S: Cheese; Processed eggs; Processed potatoes

3930544	FRESH FROM CRYSTAL FARMS TO YOUR TABLE, SIMPLY POTATOES, FRESH POTATOES. NEVER FROZEN. SHREDDED HASH BROWNS and Design	IC 029. US 046. G & S: Refrigerated or frozen processed potatoes
3994966	SIMPLY FRUITS & VEGETABLES FROM OUR FARMS TO YOUR TABLE	IC 030. US 046. G & S: Ready-made sauces
4041629	FROM OUR FAMILY FARMS TO YOUR FAMILY'S TABLE	IC 031. US 001 046. G & S: Fresh fruit
4127100	FARM TO TABLE	IC 041. US 100 101 107. G & S: vocational education in the field of culinary arts
4623665	RESPECT FOR LIFE FROM FARM TO TABLE	IC 029. US 046. G & S: Eggs; Poultry, namely, duck and chicken
4689975	HOLLISTER TAMALES HT FARM TO TABLE MADEIN U.S.A. and Design	HOLLISTER TAMALES HT FARM TO TABLE MADEIN U.S.A. and Design IC 030. US 046. G & S: Enchiladas; Tamales
4695292	FARM TO TABLE CATERING BY FILOMENA	IC 043. US 100 101. G & S: Catering
4762064	FARM-TO-TABLE BURGERS	IC 043. US 100 101. G & S: Restaurant services
4936745	WE PUT THE TO IN FARM TO TABLE	IC 035. US 100 101 102. G & S: Wholesale food distributorship services

*Id.* at 17-29, 33-4. We note that Reg. Nos. 3721582 and 3843015 are cancelled. We further note that of the above registrations, Reg. Nos. 4622743, 4714280, 4127100,

4762064 are issued on the Supplemental Register. More importantly, we note that the TSDR printouts introduced by Applicant, and upon which the above table is based, have very little probative value because the “Mark Information” field is not expanded to indicate whether any of the registrations issued on the Principal Register are subject to a claim of acquired distinctiveness under Section 2(f) or whether any wording in the marks has been disclaimed. In addition, the TSDR printouts do not list the recited goods or services. However, inasmuch as the Examining Attorney has not objected to the above table created by Applicant, we will consider it as evidence herein for what it shows on its face.

Applicant also made of record TSDR copies of third-party Reg. No. 4638155 for the mark VINE TO TABLE (standard characters) for “wine” Applicant’s May 21, 2015 Response to Office Action, TSDR p. 61; and Reg. No. 3885895 for the mark FARMER’S TABLE (standard characters) for “wines.” *Id.* at 63.

## ***II. Failure to Function as a Mark Under Sections 1, 2, & 45***

We turn to the substantive refusal, under Sections 1, 2, and 45 of the Lanham Act, on the ground that the applied-for mark does not serve to identify and distinguish Applicant’s goods. As has been frequently stated, “[b]efore there can be registration, there must be a trademark.” *In re Bose Corp.*, 546 F.2d 893, 192 USPQ 213, 215 (CCPA 1976). *See also In re Int’l Spike, Inc.*, 196 USPQ 447, 449 (TTAB 1977) (Trademark Act is for the registration, not the creation, of trademarks).

Sections 1, 2, and 45 of the Trademark Act provide the statutory basis for refusal to register subject matter that fails to function as a trademark. 15 U.S.C. §§ 1051,

1052, and 1127. Specifically, Sections 1 and 2 provide, *inter alia*, for the application and registration on the Principal Register of trademarks “by which the goods of the applicant may be distinguished from the goods of others” and Section 45 defines a “trademark,” in pertinent part, as “any word, name, symbol, or device, or any combination thereof used by a person ... to identify and distinguish his or her goods ... from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.” Accordingly, the Office is statutorily constrained to register matter on the Principal Register only if it functions as a mark.

“[N]ot every designation adopted with the intention that it performs a trademark function and even labeled as a trademark necessarily accomplishes that purpose....” *Am. Velcro, Inc. v. Charles Mayer Studios, Inc.*, 177 USPQ 149, 154 (TTAB 1973). *See also Roux Labs., Inc. v. Clairol, Inc.*, 427 F.2d 823, 166 USPQ 34, 39 (CCPA 1970).

The critical inquiry in determining whether a designation functions as a mark is how the designation would be perceived by the relevant public. To make this determination we look to the specimens and other evidence of record showing how the designation is actually used in the marketplace.

*In re Eagle Crest Inc.*, 96 USPQ2d 1227, 1229 (TTAB 2010) (citations omitted).

Thus, the central question in determining whether Applicant’s proposed mark functions as a trademark is the commercial impression it makes on the relevant public (*e.g.*, whether the term sought to be registered would be perceived as a mark identifying the source of the goods). *In re Aerospace Optico, Inc.*, 78 USPQ2d 1861, 1862 (TTAB 2006) (“the mark must be used in such a manner that it would be readily perceived as identifying the specified goods. A critical element in determining

whether matter sought to be registered as a trademark is the impression the matter makes on the relevant public.” (citations omitted)). *See also In re Keep A Breast Foundation*, \_\_\_ USPQ2d \_\_\_ (TTAB 2017); *In re Volvo Cars of North Am. Inc.*, 46 USPQ2d 1455, 1459 (TTAB 1998); *In re Remington Prods. Inc.*, 3 USPQ2d 1714, 1715 (TTAB 1987); *In re Morganroth*, 208 USPQ 284, 287 (TTAB 1980).

Based on our review of all the evidence of record, we agree with the Examining Attorney that Applicant’s proposed mark fails to function as a trademark.

The evidence of record clearly indicates that FARM TO TABLE is utilized as a statement or slogan by numerous third parties to indicate that their foods and wines are grown and produced locally as part of a growing trend toward local food and wine sourcing and production. In fact, the evidence excerpted above shows that FARM TO TABLE is commonly used in an informational manner in connection with local produce, meats, wines and events featuring these products that are prepared and served together. It is settled that the function of a trademark is to identify a single commercial source. *See. e.g., In re Eagle Crest Inc.*, 96 USPQ2d at 1230. Because consumers appear to be accustomed to seeing the phrase FARM TO TABLE displayed on or in connection with food and wines from many different sources, they would not view the slogan as a trademark indicating food or wine originating only in one source, be it Applicant or a third party. *See D.C. One Wholesaler, Inc. v. Chien*, 120 USPQ2d 1710, 1716 (TTAB 2016) (failure to function where “the marketplace is awash in products that display the term”). It is clear that food and wine, along with food and wine events, advertised with this slogan will be purchased and attended by

consumers for the message conveyed by FARM TO TABLE, namely, that the foods and wines are locally grown, sourced, produced or prepared. Applicant thus is not entitled to appropriate the statement or slogan to itself and thereby attempt to prevent competitors from using it to promote the sale of their own food products, wines and culinary events. *Id.*; see also *In re AOP LLC*, 107 USPQ2d 1644, 1655 (TTAB 2013) (finding AOP merely informational and not source-identifying for wine as it informs consumers of a certification process).

Further, the manner of use on Applicant's website, excerpted above, would not obviate the perception of FARM TO TABLE as merely an informational statement. The screenshot, displaying FOOD WINES – FARM TO TABLE in large letters above the wording "Farm to Table wines are bright, delicious, and made to match with fresh produce shared among good friends" (Applicant's November 5, 2015 Response to Office Action, TSDR 15) conveys that the wines displayed below and identified by their varietal names, are part of the trend toward locally sourced foods and wines rather than an indicator of source. In view thereof, and given the consumer familiarity with this pervasive expression, FARM TO TABLE as used on Applicant's wine bottles pictured on its web page, also would be perceived by consumers as informational matter along with the wines' varietal names.<sup>5</sup> The statement or slogan functions solely to convey an informational message regarding Applicant's wines, rather than identifying the source thereof. See, e.g., *In re Boston Beer Co. L.P.*, 198

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<sup>5</sup> We observe that "Fowles Wine" as it appears on Applicant's wine bottles is far more likely to be perceived by consumers as a source indicator than FARM TO TABLE.

F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) (THE BEST BEER IN AMERICA so highly laudatory and descriptive as applied to beer and ale that it is unregistrable); *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861 (TTAB 2006) (SPECTRUM fails to function as a mark for illuminated pushbutton switches, as it merely informs purchasers of the multiple color feature of the goods); *In re Tilcon Warren, Inc.*, 221 USPQ 86 (TTAB 1984) (WATCH THAT CHILD for construction material would be perceived merely as an expression of general concern about child safety rather than as a mark); *In re Schwauss*, 217 USPQ 361 (TTAB 1983) (FRAGILE for labels and bumper stickers is an informational statement rather than a source identifier). Regardless of the display, “[b]ecause the nature of the phrase will be perceived as informational, and also because the ubiquity of the phrase, ... it does not create the commercial impression of a source indicator.” *See D.C. One Wholesaler*, 120 USPQ2d at 1716.

Applicant’s arguments directed toward the failure to function refusal are as follows:

In this way, the wine is not “farm to table” (as wine cannot be), but rather the wine is crafted to pair with meats which may be considered to be “farm to table,” and in this way the mark is suggestive of a purpose of the wine, but not descriptive of wine. The phrase “farm-to-table” is an ambiguous moniker that cannot provide real information about the functions, features or characteristics of specific wine products. The phrase “farm-to-table” is ambiguous as to the characteristics of Applicant's wine as to whether the wine is harvested, stored, sold, and consumed locally or whether the wine was harvested in a remote location, stored in yet another location, shipped overseas and then sold and consumed, or some combination of these. In the context of the information sought by relevant consumers of wine, the phrase “farm-to-table” has no meaning. In fact, FARM TO TABLE is not used by Applicant as a synonym or substitute for the phrase “locally sourced,” and the modern interpretation of the three-word phrase “farm-to-table” in the field of alcoholic beverages, i.e., wine, is susceptible to different

interpretations such that it cannot be deemed to merely describe Applicant's goods. The mark FARM TO TABLE is neither laudatory nor ordinarily used in the marketplace, business or in a particular trade or industry for wine (although it is for certain types of food). Applicant's mark FARM TO TABLE indeed functions as a trademark.<sup>6</sup>

However, the examining attorney has shown that FARM TO TABLE would be perceived solely as informational matter rather than as a trademark and none of the evidence submitted by Applicant shows otherwise. The Examining Attorney's evidence unambiguously shows that third parties utilize the informational statement or slogan FARM TO TABLE to identify foods and wines that are locally grown, harvested, stored and sold rather than to indicate the source thereof. Applicant's contention that it does not intend FARM TO TABLE to convey such information regarding its own wines is insufficient to overcome the Examining Attorney's showing that FARM TO TABLE is pervasive in the wine industry to denote such wines as well as foods and culinary events featuring them.

Upon consideration of the entire record, we agree with the Examining Attorney that the phrase FARM TO TABLE is an informational statement or slogan used in the food and wine industries to denote locally sourced products and related dining services. As such, the evidence shows that FARM TO TABLE will be perceived as informational matter rather than as a mark designating the source of the goods.

### ***III. Mere Descriptiveness - Applicable Law***

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of "a mark which, (1) when used on or in connection with the goods of the

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<sup>6</sup> 4 TTABVue 19.

applicant is merely descriptive . . . of them.” 15 U.S.C. § 1052(e)(1). A term is “merely descriptive” within the meaning of Section 2(e)(1) if it “immediately conveys knowledge of a quality, feature, function, or characteristic of the goods or services with which it is used.” *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). “On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive.” *In re Tennis in the Round, Inc.*, 199 USPQ 496, 498 (TTAB 1978); *see also*, *In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983); *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

Whether a mark is merely descriptive is determined in relation to the goods for which registration is sought, not in the abstract or on the basis of guesswork. Descriptiveness of a term must be evaluated “in relation to the particular goods for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use.” *In re Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Bayer AG*, 82 USPQ2d at 1831). “The question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods and services are will understand the mark to convey information about them.” *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757

(Fed. Cir. 2012) (quoting *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)). A term need only describe a single feature or attribute of the goods to be descriptive. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001).

As discussed above, the Examining Attorney introduced evidence that the phrase FARM TO TABLE has a recognized meaning in the field of locally sourced foods and wines, as well as culinary services related thereto. As a result, “we simply need not dwell on considering the individual meanings of the words” comprising the mark. *In re Shiva Corp.*, 48 USPQ2d 1957, 1958 (TTAB 1998). See also *Remington Products v. North American Philips*, 892 F.2d 1576, 13 USPQ2d 1444 (Fed. Cir. 1990). We turn then to our determination whether FARM TO TABLE merely describes a feature or characteristic of Applicant’s “wines.”

Based upon the evidence excerpted above, we find that, when applied to “wines,” the mark in its entirety means and directly describes wines that are locally sourced. In particular, there is significant third-party usage of FARM TO TABLE describing not only foods sourced from local farms but also wines sourced from local vineyards.

The following examples are especially probative:

Freas Farm Winery: “Freas Farm Winery is focused on serving high quality *farm to table wines*.” August 19, 2016 Office Action, TSDR p. 39;

Napa Valley Vintners: “Leading the Culinary Team – Between the dinner parties and the Friday Barrel Auction & Marketplace, scores of the region’s chefs will be at the table for attendees, celebrating the *farm-to-table wines of Napa Valley*.” March 1, 2016 Office Action, TSDR p. 21; and

Springbank Farm: “This balanced, not too sweet, *farm-to-table wine* is made with 1 ½ pounds per bottle of *SpringBank Farm’s transitional blueberries grown locally* along the South Santiam River.” *Id.* at 26.

Descriptiveness is further demonstrated by the evidence of use of the phrase FARM TO TABLE in major newspapers to describe locally sourced meats, produce, and wines. June 24, 2015 Office Action, TSDR p. 18-30.

Applicant argues that

First, Applicant’s mark FARM TO TABLE is arbitrary or suggestive, not descriptive nor misdescriptive. Second, a reasonable consumer would not likely believe that wine products come from a farm to a table. The mark FARM TO TABLE for wine is not descriptive nor misdescriptive and under no thought process or analysis would a reasonable consumer be materially affected by the mark FARM TO TABLE believing that the wine came from a “farm to their table” affecting their decision to purchase the goods.

A consumer would only expect fresh, non-processed fruit or vegetables to come directly from a farm to the table to where they are served. All wine consumers know that wine is never “fresh.” By its very definition, wine can only be wine once the grape juice used to make it is processed and then aged for several months or years. Thus, it is an absurdity to argue that wine consumers would believe that wine was “fresh from a farm” to be consumed at their table. Furthermore, the purchaser will be present at the purchase—and will be aware of the surroundings; given it will be licensed premises that are not a vineyard (as other producers will not be selling Applicant's wine, they will sell their own), and therefore they will actually know that the wine is not coming immediately from “a farm.” 4 TTABVUE 18.

First, the Examining Attorney’s evidence belies Applicant’s contention that FARM TO TABLE is arbitrary or suggestive. Rather, the evidence shows that FARM TO TABLE directly describes a feature of characteristic of “wines,” namely that they are locally sourced. Second, the evidence demonstrates that while FARM TO TABLE may have its origins in describing foods from local farms, the phrase is applicable to wines made with grapes from local vineyards. Indeed, some of the evidence specifically

describes wines originating from grapes grown at vineyards and wineries located in the same areas as FARM TO TABLE wines and demonstrates that third parties use FARM TO TABLE to describe such wines. The following example is illustrative:

Northern Vineyards Winery: “Wine Making Process...The wine making process begins in late August or early September at our winery. The grapes are harvested and transported to the winery...The complete *process from farm to table* is accomplished in our *local area*. The *wine making process is done on location* at Northern Vineyards Winery.” June 24, 2015 Office Action, TSDR p. 5.

Third, Applicant’s argument that FARM TO TABLE cannot describe wine because “fresh” wines available literally from farm to table would be unaged and undrinkable grape juice misapprehends the meaning of FARM TO TABLE as applied to wines. The evidence shows that FARM TO TABLE wines are not necessarily freshly pressed and unaged, but rather made from grapes grown in the same area as the wineries at which they are pressed and aged, and often are suitable to be paired with local foods. Thus, the phrase FARM TO TABLE merely describes locally sourced wines that are suitable for consumption with locally sourced foods. Nor do we find that FARM TO TABLE creates any incongruity as applied to wines because there is no evidence that the wine industry uses the phrase to describe the age of the wines, but rather the locally produced nature thereof. In other words, Applicant’s mark lacks the type of suggestiveness or incongruous meaning that might avoid mere descriptiveness. *See generally In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382 (CCPA 1968) (“unusual association or arrangement in the applicant’s mark [SUGAR & SPICE] results in a unique and catchy expression which does not, without some analysis and rearrangement of its components suggest the contents of applicant’s goods”).

Finally, Applicant's evidence of third party registration of FARM TO TABLE-formative marks for food products and services not including wines and third-party registrations for VINE TO TABLE and FARMER'S TABLE for "wines" does not compel a different result. "It has been said many times that each case must be decided on its own facts." *In re Eagle Crest Inc.*, 96 USPQ2d at 1229 (internal citation omitted). None of the third-party registrations for FARM TO TABLE marks identify wines among their goods or services, and the two third-party registrations for "wines" do not feature the mark FARM TO TABLE, but different marks with different meanings. In addition, we simply are not bound by the prior actions of examining attorneys involving different marks, different goods or services and different evidentiary records. *See In re Davey Products Pty Ltd.*, 92 USPQ2d 1198, 1206 (TTAB 2009); *In re Ginc UK Ltd.*, 90 USPQ2d 1472, 1480 (TTAB 2007); *In re Outdoor Recreation Group*, 81 USPQ2d 1392, 1399 (TTAB 2006). Regardless, as noted above, the evidence is incomplete and lacks information we would consider essential in comparing the third-party registrations to Applicant's application.

#### **IV. Conclusion**

We have carefully considered all arguments and evidence of record, including any not specifically discussed. We find that FARM TO TABLE fails to function as a mark under Sections 1, 2, and 45 of the Trademark Act and, in the alternative, is merely descriptive of the wines identified in Applicant's application under Section 2(e)(1) of the Trademark Act.

Serial No. 79157017

**Decision:** The refusals to register Applicant's mark FARM TO TABLE are affirmed.